



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS

Gerald C. Mann
Attorney General

Honorable Forrester Hancock
Criminal District Attorney
Waxahachie, Texas

Dear Sir:

Opinion No. G-2486
Re: Candidate's application
for name on ballot -
failure to file on time -
Article 3113, R. C. S.,
1925.

This will acknowledge receipt of your letter of
June 24, 1940, requesting the opinion of this department
upon the following question:

"Where a candidate for a county or
precinct office fails to file his written
intention in pursuance to the provisions of
Art. 3113, R. C. S., 1925, can a County Democra-
tic Committee, upon hearing the evidence and
testimony of the said candidate, instruct
the Chairman to place said candidate's name
upon the official ballot, subject to his pay-
ing at the proper time the fee assessed a-
gainst said candidate's race?"

In this connection, you state that,

"For your information, this past Saturday
a candidate for constable and a candidate for
county commissioner of Ellis County, at their
expense, had the County Chairman of Ellis
County to call a meeting for the Democratic
Executive Committee of Ellis County. At this
meeting the respective candidates, indivi-
dually and out of the presence of each other,
submitted in person the reasons why they did
not file under the said Article 3113 afore-
said, and after having been examined and
cross-examined by the respective members of
the Committee as to their said failure, the said
Committee voted on each individual case a uni-
mous vote that each candidate be placed on the
ballot, subject to his paying the fee assessed
against his race and subject to the opinion of the
Attorney General of Texas."

Article 3113, Vernon's Annotated Civil Statutes, reads
as follows:

"Any person desiring his name to appear

on the official ballot for the general primary, as a candidate for the nomination for any office to be filled by the qualified voters of a county or a portion thereof, or for county chairman, shall file with the county chairman of the county of his residence, not later than Saturday before the third Monday in June preceding such primary, a written request for his name to be printed on such official ballot as a candidate for the nomination or position named therein, giving his occupation and post-office address, giving street and number of his residence, if within a city or town, such request to be signed and acknowledged by him before some officer authorized to take acknowledgment to deeds. Such request similarly signed and acknowledged by any twenty-five qualified voters resident in the county may be filed on or before said date, requesting that the name of any person named therein may be placed on the official ballot as a candidate for any county or precinct office or chairmanship, with like effect as if such request was filed by the person named as a candidate therein; which request shall be endorsed by the candidate named therein, showing his consent to such candidacy, if nominated."

As stated in the annotation in Vol. 72 of the American Law Reports at page 290:

"It is generally and almost universally held that statutory provisions in election statutes, requiring that a certificate or application of nomination be filed with a specified officer within a stipulated period of time, are mandatory."

This is apparently the rule in this State. In *Dunagan v. Jones* (C. C. A. 1934) 76 S. W. (2d) 219, the court, by way of dictum, stated:

"* * *. Any candidate for county office is expressly given the right to have his name appear printed on the official ballot of the primary election upon written request signed and acknowledged and filed with the county chairman not later than Saturday before the third Monday in June preceding such election. Article 3113. And further, as a condition precedent, the county candidates must pay to the executive committee the amount of the estimated expenses of holding the primary apportioned to him. Article 3116, W. S. Since statutory provisions as to the preparation of the ballot and as to the printed names to appear thereon must be strictly followed (20 C.

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J., s 164, p. 141), the right of a candidate to have his name printed on the official ballot would not be evident in case of failure to the timely fulfill the requirements of the statute, and his application for mandamus would probably be denied by the court. * * * (Underlining ours)

Many inquiries are involved in the proper construction of an election statute. Among the more important ones are, is the statute being considered from the point of view of election officials and candidates for election, or is it being considered from the standpoint of the electorate? In addition, the question arises, is the statute being interpreted prior to, or after the election? As succinctly stated by the Texas Supreme Court in *Sterling v. Ferguson*, 122 Tex. 122, 53 S. W. (2d) 753:

"While we have said that these statutes with reference to certification by the secretary of state, posting by the county clerk, and the supplying of ballots twenty days before the election for absentee voters, are mandatory before the election, and obedience thereto may be enforced, it does not follow that failure to follow them would result in a void election. We say this in order that our statement of the previous rule may not be misunderstood. After an election, most election statutes are to be regarded in a somewhat different light. Ordinarily after an election the inquiry is one as to whether or not there has been a free and untrammelled vote and a correct record made; and, if so, the courts are prone to sustain the result of the election. 9 Ruling Case Law, p. 1091, § 101. However, before the election these statutes, the object and purpose of which has been briefly referred to, are statutes which the public officers should obey, and which they may ordinarily be required to obey by proper proceedings."

Consequently, it is the opinion of this department and you are respectfully advised, that Article 3113, Vernon's Annotated Civil Statutes, limiting the time when a candidate for office may file application to have his name placed upon the ballot is mandatory. Being mandatory, it is the duty of candidates and election officials alike, including the county executive committee, to abide strictly by its letter. Being mandatory, moreover, its provisions cannot be waived by the joint agreement of all parties concerned.

For your guidance, we point out, however, that this opinion interprets Article 3113 only as concerns its mandatory

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character prior to the election and only insofar as the duty of candidates and election officials is concerned. We cannot, nor do we attempt, to pass upon the validity of an election held contrary to its provision.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ James D. Smullen
Assistant

JDS:RS:jrb

APPROVED JULY 8, 1940
/s/ Glenn E. Lewis
ACTING ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY EWE, Chairman